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PUBLIC UTILITIES COMMISSION

In the Matter of the Application of MOLOKAI PUBLIC UTILITIES, INC. For review and approval of rate increases; revised rate schedules; and revised rules.	)	DOCKET NO. 2009-0048

COUNTY OF MAUI AND WEST MOLOKAI ASSOCIATION'S JOINT UPDATED STATEMENT OF PROBABLE ENTITLEMENT

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COUNTY OF MAUI AND WEST MOLOKAI ASSOCIATION'S JOINT UPDATED STATEMENT OF PROBABLE ENTITLEMENT

1.0 INTRODUCTION

On March 10, 2010, West Molokai Association ("WMA") and the County of Maui ("COM") filed their Statements of Probable Entitlement setting forth what they then believed to be the amount Molokai Public Utilities, Inc. ("MPUI") was entitled to, based upon the state of the record at that point in time. WMA's stated amount of MPUI's probable entitlement was $760,158. WMA's proposed amount was the approximate level of MPUI annual revenues being generated with the temporary increase, authorized by the Commission's "Temporary Relief Order," in Docket 2008-0115, dated August 14, 2008. COM did not quantify the amount of probable entitlement.

On May 13, 2010, at the conclusion of the evidentiary phase of the contested case proceeding, the Commission directed the parties to submit updated Probable Entitlement Statements. Parties who offered evidence had effectively finalized their positions in the documents submitted into the evidentiary record.[1]

2.0 SUMMARY

To summarize the more detailed analysis which follows, the evidentiary record supports MPUI's entitlement (1) to the immediate implementation of two energy adjustment clauses, which are strongly recommended by three of the four parties, as well as by MPUI's expert witness, and (2) to a revenue requirement **equivalent** to $982,333. The $982,333 **equivalency** is the amount of revenue requirement mutually consented to between the Division of Consumer

[1] CA/MPUI correspondence dated May 3, May 6, and May 11, 2010 do not have exhibit numbers and were neither offered nor received into the record. Attachments 1 and 2 to "CA/MPUI's Joint Updated Statement of Probable Entitlement" are identical to the May 11, 2010 attachments. They are not in evidence but are assumed to have been received, inasmuch as they were extensively cross examined in the evidentiary hearing.

Advocacy ("CA") and MPUI.[2] Because WMA made some concessions, in the course of proceeding, WMA's projected MPUI revenue requirement – **other than energy expenses** – approximates the revenue requirement amount for which CA and MPUI bargained.

Analysis of **equivalency** will follow, infra. In essence, CA/MPUI's mutual concessions pack $160,555 of fat onto MPUI's revenue requirements, by means of (a) older fuel costs, (b) capturing peak electricity costs, and (c) misapplication of 15% water losses to a bloated total volume of pumped water.

3.0 NON-ENERGY OPERATING EXPENSES

The amount of monies shown on Hearing Exhibits WMA 9 and 10 demonstrate revenue substantially less than $982.333. Except for the minor difference of $30,000 for regulatory expenses, however, differences in total operating expenses between WMA and CA/MPUI are attributed to different energy prices and different quantities for diesel fuel and electricity.

4.0 MPUI'S ENERGY COSTS

The CA/MPUI mutual concessions agreement results in a revenue requirement comprised, in part, of annual (test year) energy costs based on the average of three years of high cost fuel and electricity and unnecessary quantities of fuel and electricity. CA/MPUI's projected costs are based on dated data and excessive pumping, which values are contradicted by reliable

[2] Just because CA and MPUI have consented to each other's concessions, the Commission cannot find such concessions reasonable, to make its "Findings" and "Conclusions." Essential findings must be based on evidence. The CA's evidence – submitted under oath as being true and correct – projects a revenue requirement of $858,737. There is no evidence explaining how CA's revenue requirement increased $123,596 from testimony tendered under oath. The CA/MPUI mutual concessions are not evidence. The same rationale applies to MPUI, as well: 52 pages of MPUI rebuttal testimony explained how it reduced its $1,326,097 to a $1,196,734 revenue requirement, but not one word is written on its rationale of conceding an additional $214,401 reduction in revenue requirement. At some stage in the process, MPUI's voluntary reduction of revenue requirement of $343,764, or 25.9% of its original request, remains to be justified because it has not been supported with evidence. Credibility of MPUI's whole case is called into question.

evidence (refer, infra, Subparts 4.1 to 4.4). Energy costs derived by CA/MPUI are composites of annual costs, averaged over three years. During that three year period of time, energy costs were at record highs. The costs for diesel fuel and electricity have declined for the past several months.

In their "Joint Updated Statement of Probable Entitlement," CA/MPUI discuss their "Settlement of Differences." However, differences COM and WMA have with MPUI's application, and MPUI's direct and rebuttal testimonies, remain unsettled. For MPUI to prevail, it must rely on evidence, not compromises.

The most notable example is the sum of CA and MPUI's "discussion" of $373,725 of energy costs – fully 38% of MPUI's total revenue requirement. The following is the shallow, superficial total analysis of energy costs.

> 4. Fuel and Electricity Expense
>
> The Consumer Advocate proposed to modify its calculation of the fuel and electricity expense by increasing the lost and unaccounted for water factor from 10 percent to 15 percent for settlement purposes and also agreed to use a three-year average for the determination of the price per gallon of fuel and also for the cost per kWh. MPUI accepted the use of the 15 percent water loss and also agreed that it would not seek to implement automatic adjustment clauses in this proceeding. Based upon the agreement, the recommended level of electricity and fuel expense is $191,710 and $182,015, respectively.

CA/MPUI Joint Statement, filed May 18, 2010. The Company summarily addresses a complex set of interrelated matters: (a) energy adjustment clauses, for which MPUI's testimonies are 100% supportive, (b) historical, averaged costs of fuel and kWhs, (c) a 20 year saga of water losses, and (d) what amount of fuel and electricity is needed to pump a reasonable amount of water.

CA/MPUI's "discussion" does not satisfy the law confronting the Commission: the law is that the Commission's findings must be supported with reliable evidence. The mutual concessions are not supported by evidence on the above four cited energy topics.

WMA has sponsored all of the credible evidence on those same four topics.

To make a fair determination of MPUI's reasonable energy costs for a test period, one must conduct analyses of (a) the impact of energy adjustment clauses, (b) the prices MPUI must pay for energy, (c) the reasonableness of the quantity of water being lifted by pumps, which, in turn, is based upon (d) determining what is the reasonable amount in this ratemaking exercise, to allow for lost water.

4.1 ENERGY ADJUSTMENT CLAUSES BENEFIT THE CONSUMERS

MPUI's situation requires that energy adjustment clauses be inserted into its tariffs. Counsel for MPL argued the unfairness to MPL to impose sanctions on MPL for its possible future failures over matters for which MPL has no control. WMA and COM agree: give MPUI some control over its largest, most variable costs.

In one important respect, CA's settlement proposal served everyone, insofar as it "broke the log jam" and put an initial compromise on the table. Unfortunately, it was couched in terms of "take it or reject it," which foreclosed essential discussion on the relative merits of energy adjustment clauses. The CA contends energy adjustment clauses must be rejected. The reason given: without adjustment clauses, the smaller utility companies will be forced to seek more frequent, smaller rate relief.

CA's contention is specious. First, most utility companies do quite well looking out for their own interests, without the CA asking utility companies to come in more often for more rate relief. Rate relief in this case is costing rate payers $75,000 per year – between 7.6% of its proposed revenue requirement ($75,000/982,336) and 9.6% of WMA's proposed revenue requirement ($75,000/778,787). Greater frequency is not resulting in fairness.

Also, if less frequent rate applications were to result in larger increases (e.g., greater than 25%), then the increase can be phased-in, as the CA has proposed in this case.

In any such event, if CA wants more frequent visits with a utility, it has the power to do so, under Subsection 269-54(d) Haw. Rev. Stat.

Adjustment clauses in this case would impact the revenue requirement in a major way. In order to "avoid" use of favorable devices (i.e., adjustment clauses), CA/MPUI have elected to use an even more favorable device for MPUI – add a $160,555 of additional revenue requirement by use of dated energy costs, averaged, and permit excessive pumping. The Commission should not permit such a blatant, self serving device to be employed.

4.2 REASONABLE ENERGY COSTS ARE DEPENDENT ON THE APPROVAL OF THE ADJUSTMENT CLAUSES

COM and WMA propose adjustment clauses, agreeing with MPUI's expert in his direct and rebuttal testimonies, as well as his response in his oral testimony on May 11 and 12, 2010. A fuel adjustment clause is imperative, in the personal and professional opinion of MPUI's expert Witness O'Brien.

4.2.1 FUEL PRICES

There is agreement on the best price to be used for calculating the proper revenue requirement for energy – the latest available prices. COM and WMA believe it to be $2.57, as of the filing of WMA's Direct Testimony on January 6, 2010. The price may be somewhat higher today. The Commission should approve the fuel adjustment clause, and insert the most recent available price data from Chevron's jobber.

The CA urged use of the average price for diesel fuel, for the most recent three years, which average price is $3.66 per gallon. The difference is $1.09 per gallon. Using CA/MPUI's quantity of 49,730 gallons of fuel, the reasonable fuel expense is $127,808, not the $182,015 amount agreed to between CA and MPUI.

4.2.2 ELECTRICITY PRICES

The difference in electric expenses between WMA's $82,330 and CA/MPUI's concession value of $191,710 is $109,380. Much of that difference is attributable to WMA using the most recent invoices of MECO. Consistent with Witness O'Brien's testimonies, there should be an electricity adjustment clause to give MPUI some control over its electric energy costs. For ratemaking analysis, the most recent MECO invoices should be the source for the price of electricity. For computation of a reasonable cost for diesel fuel, WMA allows for a 10% loss of retail water available for sale, which sets the quantity of water necessary to be pumped at Well No. 17, at 154,395 TG (Exhibit WMA 204, p. 1). MPUI, WMA and COM agree on the prudency and appropriateness for an electric energy adjustment clause being a part of MPUI's tariff.

4.3 ACCOUNTING FOR PREVIOUSLY UNACCOUNTED FOR WATER LOSSES

Nearly seven years ago, the Commission ordered MPUI to upgrade its transmission lines and to report on steps the company will take to fix its water loss problems. *Docket No. 02-0371, Decision and Order No. 20342, filed July 18, 2003.* The record in this proceeding is clear and undisputed that MPUI has done nothing to account for and fix its lost and unaccounted for water. Despite the fact that MPUI admits to staggering water loss numbers, the CA and MPUI agreed in their settlement to simply put off for yet another day MPUI's obligations to fix its water loss problems. This is unacceptable and only harms the consumers who will be forced to pay for the increased expenses associated with an irresponsible water utility company.

The WMA 200 series of exhibits quantifies what had earlier been referred to as "lost and unaccounted for" water. Based on WMA's considerable effort, the locations and volumes of wasted water are now largely accounted for. The waste is a staggering amount.

MPUI's expert calculated losses – inclusive of Molokai Irrigation System ("MIS") "fees" (partially paid for with water, partially paid for in cash) - to be 49.7% for calendar year 2008. (Refer. MPUI Hearing Exhibit No. 2, lines 22-35) Witness O'Brien's calculation of 2008's lost water is 49.7% of water pumped; if the same volume of wasted water were calculated on a basis of water sold by MPUI to its retail customers – as Witness Marusich did for a later period of time – the estimated loss for a portion of the year when the golf course was operating, approximates 101%. If water losses are calculated as a percent of water sold, with no sale of water to the golf course, the wasted water figure would further exceed the 101% of lost water figure.

For ratemaking to be fair to all concerned, only reasonable expenses are allowed to be recovered. MPUI had seven years since the last rate case to fix leaks, but failed to do so. Many remaining unrepaired leaks are easily and readily accessible from the main road, yet they continue to go unrepaired (See WMA Hearing Exhibits 4 and 5 – map and photograph of an unrepaired leak). The Commission cannot and should not put off for another day in some future rate case MPUI's duties and obligations to repair its water leaks.

4.3.1 WATER METER READINGS ARE THE MOST RELIABLE EVIDENCE IN THIS CASE

Exhibits WMA 201 and 202 are tables of meter readings, by month, for recent periods of time (circ. 2008-2009). Exhibit WMA 203 summarizes the readings and proves that 218,887 TG must be pumped at Well No. 17, in order for MPUI to wholesale water to Wai'ola O Moloka'i ("WOM") at Kualapuu (26,000 TG), pay MIS in water (19,289 TG) and sell potable water to MPUI customers in its service area (104,000 TG). Those amounts are givens; what could have been avoided – or at least reduced – is the 69,598 TG expended at the Puunana Water Treatment Plant ("WTP") and for leaks. The Company has had years to take remedial actions; but 58.4% water losses within the service area - and exclusive of MIS and Kualapuu - is excessive to an extreme (Refer, Exhibit WMA 203, p. 1, lines 2 and 4).

4.3.2 <u>FOR RATEMAKING PURPOSES, WHAT AMOUNT OF WASTED WATER IS PERMISSIBLE?</u>

Commissioners expressed their perplexion of CA's original maximum 15% allowance of "lost and unaccountable" water: if the MIS requires 10% and the WTP requires 9-12%, MPUI is placed into a deficit position in its attempt to recover energy costs. MPUI made a deal in order to avoid scrutiny of its projected energy costs (e.g., "average pricing," consumption of energy, by pump, etc.).

In contrast, WMA analyzed water meter readings, by month and by location, and documented water losses, at specific locations along MPUI's system. WMA's water losses are expressed as relationships between the water wasted and the water sold.

It is important to note that MPUI sells water at two locations: (a) at the Kualapuu Tap, a point in relative close proximity to Well No. 17, a distance within which virtually no water is lost; and (b) sale of water to retail customers, along MPUI's distribution mains, after the water has been transported through the MIS, and then pumped up the hill to the WTP. At the WTP, Well No. 17 water is commingled with WOM's mountain water.[3]

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[3] Due to the lack of meters being located at appropriate places, the relative portions of water delivered to WOM's Maunaloa service area (water WOM owns) on the one hand, and the portion of the purified water derived from water lifted at MPUI's Well No. 17, transported through the MIS, lifted at a pump in Mahana, and processed at the WTP. But the record is sufficiently clear that MPUI has been, at various times, a contributor of some unquantified amount of water at Puunana, for the benefit of WOM. The record in this case is 21,900 TG are treated for the benefit of WOM. (The latest spreadsheet presented by MPUI/CA indicates 18,925 TG as being treated. That number appears to be erroneous, due to the fact that 22,900 TG are delivered to WOM at the Kualapuu Tap and the remaining 27,100 TG (total being 50,000 TG – the total amount forecasted in the HPUC Docket 2009-0049 as a normalized 50,000 TG), leaving 5,200 TG being sold to WOM after the processing at the WTP.)

Beyond the volume of water, WOM/MPUI expert O'Brien concedes the pricing/costing of such water is confusing. He is to provide a post-hearing exhibit, in an attempt to justify his recent costing of $1.08 per TG. That amount appears to be for chemicals only, which fails to include WOM's fair share of depreciation, labor, overhead, and electricity.

MPUI claims it does not sell water to WOM at a point just below the WTP. Generally, MPUI redelivers to WOM WOM's mountain water, which MPUI makes potable by using MPUI's WTP. For certain, MPUI sells a water cleaning service to WOM and should be charging for related costs for chemicals, labor, depreciation and electricity, on a per TG basis. But, WMA's analysis also discloses that an unquantifiable amount of MPUI's Well No. 17 water is also delivered to WOM, just beyond the WTP. And that water is costly, having incurred MIS fees and pumping costs.

4.4 SELECTING THE APPROPRIATE ALLOWANCE FOR WASTED WATER SUBSTANTIALLY REDUCES ELECTRICITY COSTS AND REVENUE REQUIREMENTS

The largest dollar difference in revenue requirement between CA/MPUI and COM/WMA is in electric charges. CA/MPUI project $191,710 to be paid MECO in a one-year test period. WMA has calculated $82,330. The difference of $109,380 is attributable, in part, as stated above, to differences in prices. Another portion is attributable to different allowances for water losses.

The real difference is CA/MPUI's non-disclosure of quantities of kWh, consumed at specific pumping locations. CA's "15%" approach gives a meaningless result; MPUI's analyses changed from its approach in its direct ($282,524) testimony, reduced in its rebuttal ($153,849) testimony, and increased ($37,861) in its CA/MPUI mutual concessions.

In contrast, WMA analysis was conducted pump-by-pump, using specific amounts of water, with volumes differing by location. At Mahana (the 500 HP motor/pump), WMA has allowed 156,217 TG as a reasonable volume, requiring 768,800 kWh in a test year, at a base (most recent) MECO rate of $0.20111/kWh, or $61,728 electrical costs, at Mahana. (Refer, Exhibit WMA 205, 3 pages)

At Puunana, WMA has allowed a reasonable volume of water to be processed through the pump at the WTP, to care for WOM's treatment needs at Maunaloa, and to serve MPUI's retail customers. The reasonable volume is 144,133 TG, requiring 67,916 kWh in a test year, at a base (most recent) MECO rate of $0.317/kWh, or $21,550. (Refer, Exhibit WMA 206, 3 pages)

Those values were not rebutted and were not cross-examined. The dollar values are unrefuted and are the best evidence in the record before the Commission.

5.0 <u>IN FAIRNESS, WHO IS TO PAY FOR THAT PORTION OF MPUI'S FIXED COSTS HERETOFOR BORNE BY THE HOTEL AND THE GOLF COURSE?</u>

Much evidence has been introduced with regard to the manner in which revenues should be recovered by MPUI, going forward. The CA's and MPUI's agreement to an across-the-board increase, without any regard to rate design or reform, is irresponsible and inequitable. Maintaining the status quo as far as rate structure goes forces the remaining rate payers to cover MPUI's expenses that prior to this rate application were borne largely by MPUI's largest customer and affiliated company, Molokai Properties, Ltd. ("MPL"). MPUI complained throughout the proceedings that it should not be "penalized" for economic conditions and the loss of customers simply because its parent company withdrew its operations from the service area. Yet, neither the CA nor MPUI recognized that it is equally unfair and unjust to "penalize" the remaining rate payers by forcing them to cover the costs of a water system that was designed and built to provide water to a hotel and golf course, two significant water users.

The problem arises because MPUI has, for years, collected a disproportionate and unjustified proportion of its **fixed** costs in its **usage** charges. The irrationality - and dangers - for a utility to collect its revenues with non-cost related rates become manifest when a large block of customers is lost. When MPUI lost the golf course and the hotel as consumers of water, MPUI's "loss of load" approximated 40-45% of its former total demand for water. The resulting pain is incurred by remaining customers due to the faulty rate structure in place.

For MPUI to propose that a 140% increase in rates be spread on an "across-the-board" basis on the remaining customers is irresponsible. It is short-sighted, as well: because consumption of water is so costly, retail demand for water will be further curtailed. Because such a large portion of MPUI's fixed costs are recovered in usage charges, MPUI will soon again be in need of more rate relief.

5.1 THE SOLUTION IS TO REVERT TO COST-RELATED RATES

MPUI and the CA have effectively agreed that the pain directly associated with MPUI's lost revenues must be spread "across-the-board," only to the remaining consumers of water, and until the next rate case is filed with a comprehensive cost of service study ("COSS"). In so proposing, CA/MPUI are passing the "pain passing" process on to the Commission.

The CA abdicated its statutory duty: it failed to propose any rate structure reform; no customer rate impact analysis was conducted – none; CA raised but did not deal with the excess capacity/abandoned plant issues, etc. The ultimate solution is to redesign the rate structure in order to price water usage at cost, and to then price the infrastructure, the repair and maintenance, and general expenses associated with an ongoing utility company at costs, as well. Fixed costs should be paid for in fixed charges; usage of water should be paid for in cost-related usage charges.

CA/MPUI have objected to the implementation of such rate reform prior to the completion of a COSS, stating various reasons why it is imprudent to commence the implementation of rate re-design, without a complete COSS. The practical effect of CA/MPUI's "across-the-board" pricing policy is to inflict all of the pain on the **remaining** consumers, without imposing any accountability for the stranded plant built and dedicated to serving former large consumers. That might be acceptable for MPUI's management philosophy; for the CA to acquiesce in the idea is an abdication of its statutory duties to represent, protect and advance the interests of consumers.

5.2 THE REASONS GIVEN IN OPPOSITION TO COST-RELATED RATES ARE INAPPLICABLE TO THE FACTS IN THIS CASE

CA/MPUI's objections to the immediate commencement of a phased-in implementation of rate reform are essentially three in number. (Refer, MPUI R T, p. 49, lines 4-12.)

5.2.1 MPUI'S SERVICE AREA HAS A HOMOGENEOUS DEMAND

O'Brien's first objection to WMA's lack of a category COSS is moot: O'Brien admits under cross-examination that the demand for MPUI's water is now homogenous - all residential-like, with no commercial, industrial, or agricultural demands of any significance.

5.2.2 IN THIS CASE, MPUI HAS NO COSTS RELATED TO PLANT AND RATE BASE

O'Brien's second objection to WMA's absence of a COSS is irrelevant: O'Brien and Nishina contend that "functionalization analysis" of plant-in-service must be made. The fact of the matter is, however, that there is no plant-in-service, or rate base, or rate of return components in MPUI's revenue requirement.

5.2.3 FIXED AND VARIABLE COSTS HAVE BEEN QUANTIFIED

Thirdly, O'Brien contends that water company costs have more characteristics than merely being either fixed or varied, arguing costs can be "semi-variable." The fact of the matter is that Witness Fujino did perform an analysis of fixed and variable costs, and sponsored evidence neither CA nor MPUI chose to challenge, either in their own testimonies, or on cross-examination. Fujino's testimony is unrebutted. Fujino's testimony is more credible than that of the other witnesses.[4] Further, MPUI has itself typed its operating expenses as either "fixed" or "variable," so MPUI is estopped from arguing it cannot be done. MPUI did it, albeit incorrectly (Refer, COM Hearing Exhibit No. 4, p. 7); unfortunately, the Commission relied on the erroneous $6.04/TG rate.[5]

To summarize, the Commission has an adequate evidentiary record to, at a minimum, commence some reform to the existing rate structure, in its award of temporary rates, as a result of the "probable entitlement" process. All it needs to do in its probable entitlement order is to freeze the "usage charge" of $6.04, and keep it frozen until its Final Decision and Order.

6.0 WITH THE PROPOSED THREE-PHASED RATE INCREASE, A COSS CAN BE COMPLETED AFTER THE IMPLEMENTATION OF PHASE II OF THE PERMANENT RATE INCREASE

Granting rate increases in a phased-in process provides an ideal opportunity to begin the rate reform process, without a comprehensive COSS in hand at the present time.

There will be three stages of increases: (1) the probable entitlement stage, to occur approximately June 1, 2010; (2) Phase I of the permanent rate increase, to occur sometime in the October/November, 2010 timeframe immediately after the Commission's Final Decision and Order; and (3) Phase II of the permanent rate increase, to occur in the April/May 2011 timeframe. CA/MPUI subtly suggested in their joint statement that Phase I be the temporary, probable entitlement effective May 29, 2010. (Refer, p. 7, CA/MPUI Joint Statement) That is not what the Commission intended or ordered. Phases I and II – six months apart - commence with the Commission's Final Decision and Order, subsequent to receipt of transcripts and briefings.

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[4] Cost items such as MIS rent ($136,497) and regulatory expense ($75,000) are as fixed as fixed can get; those two cost items, alone, are 111% of MPUI's proposed total fixed charge revenues of $123,218.

[5] Lower on that same page, appears the current temporary "usage rate" of $6.04/TG adopted - erroneously - by the Commission in its emergency relief order.

COM and WMA urge the Commission to: (a) freeze the current usage charge of $6.04, (b) implement reasonable energy adjustment clauses and base energy costs on current prices, (c) adjust the rate base by removing $170,241 for the fuel cost to pump from Well 17 until all necessary permits are obtained,[6] and (d) remove $136,497[7] which represents the cost of the MIS rental until all necessary environmental approvals are received. Any additional revenue requirement the Commission deems appropriate as Phase I of a two-phased permanent rate increase can be spread on fixed charges by **customers' meter sizes**.

When Phase II increases are implemented as the last of the three stages of rate changes, the COSS ordered by the Commission in its "Final Decision and Order" will have been completed, and the remaining portion of the revenue requirement can be restructured in accord with the then-completed COSS.

The COSS should be conducted at the direction of the Commission, at MPUI's expense. Phase II rates can be based on the then-completed COSS. Thus, by April/May 2011, a redesigned rate structure will be in place, possibly based upon meter size, possibly on some other rate design. Rates might be based upon discrete subcategories of residential customers due to the fact that the overwhelming majority of water use within the MPUI service area is residential in nature. COM and WMA urge that the Commission and the parties act deliberately, in order that the Commission-directed COSS can be completed.

6 MPUI's expert, Mr. O'Brien, testified that the entire "Fuel Expense" on line 11 of attachment 1 to the letter dated May 11, 2010 detailing the settlement between the CA and MPUI was for pumping at Well 17. The amount MPUI originally sought for "Fuel Expense" was $231,067; MPUI later revised the amount to $199,887, and still later to $182,015. Under the settlement with the CA, the final figure agreed to was $170,241.

7 See line 12 of attachment 1 to the letter dated May 11, 2010.

7.0 <u>CONCLUSION</u>

While the Commission is required by statute to determine whether MPUI is "probably entitled" to an interim rate increase, the Commission cannot and should not ignore the fundamental problems and unanswered questions that are littered throughout the evidentiary record. The agreement that was reached between the CA and MPUI postponed for another day what needs to be determined in this docket.

Commissioner Kondo's commentary and questions of counsel for COM at the closing arguments were on point. To paraphrase:

> "What are we as Commissioners to do if we know MPUI's rate structure is broken, antiquated, and otherwise inappropriate, but we can't accept WMA's evidence in support of its proposed new customer categories?"

The answer is to take advantage of the time it takes to phase in the temporary rate increase, and then, later, Phases I and II – phases the CA insisted upon in its "Statement of Principles."

<u>STEP NO. 1</u>: The Commission is urged to make findings and conclusions that MPUI's current rate structure is defective, <u>per se.</u>

<u>STEP NO. 2</u>: Freeze the present usage charge at the current "temporary" rate of $6.04 per TG. It is far in excess of costs but the refunding of rates is always problematic. Do not reduce the usage charge at this time. It will cause confusion with refunds.

<u>STEP NO. 3</u>: Direct that the two energy adjustment clauses be implemented and temporarily remove the fuel expense of $170,241 and the MIS rental amount of $136,497 until MPUI becomes compliant with all regulations and laws.

STEP NO. 4: Whatever slight increase is due, based upon "probable entitlement" (Revenue Requirement should approximate $800,000, based on current MECO invoices and current diesel fuel jobber rates), all new energy costs go into the adjustment clause formulae. Increases to revenue requirement, if any, can be spread on MPUI's classes of meters (e.g., 5/8," 1," etc.). That's it for "probable entitlement."

STEP NO. 5: At the time of issuance of the "Final Decision and Order" (estimated to occur late September, 2010, based on availability of transcripts, the briefing schedule, etc.), the Commission can – in that order require a COSS to commence immediately and be completed at the time of the implementation of the Phase II increase in rates. A new structure can then be in place, taking into consideration factors such as excess capacity, abandonment of plant, functionalization of costs, value of service, and possibly an imputed rate base.

DATED: Honolulu, Hawaii, May 21, 2010.

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For review and approval of rate increases; revised rate schedules; and revised rules.	)	
	)	

CERTIFICATE OF SERVICE

Pursuant to Hawaii Administrative Rules § 6-61-21(d), the undersigned certifies that a true and correct copy of the foregoing document was duly served on the following parties on May 21, 2010, at their last known addresses in the manner specified below:

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